

Railroad Retirement Board

§ 219.32

when that person's marriage is necessary to determine the applicant's entitlement to benefits under the Railroad Retirement Act.

(b) *State law.* In deciding whether the marriage to the employee is valid or not, in a case where the employee is living, the Board will follow the law of the state where the employee had a permanent home when the applicant filed an application; in a case where the employee is dead, the Board will follow the law of the state where the employee had a permanent home when he or she died.

(c) *Types of evidence.* What evidence will be required depends on whether the employee's marriage was a ceremonial marriage, a common-law marriage, or a marriage that can be deemed to be valid.

§ 219.31 Evidence of a valid ceremonial marriage.

(a) *Preferred evidence.* Preferred evidence of a ceremonial marriage is—

(1) A copy of the public record of the marriage, certified by the custodian of the record or by a Board employee;

(2) A copy of a church record of the marriage certified by the custodian of the record or by a Board employee; or

(3) The original certificate of marriage.

(b) *Other evidence of a ceremonial marriage.* If preferred evidence of a ceremonial marriage cannot be obtained, the applicant must state the reason therefor in writing and submit either—

(1) A sworn statement of the clergyman or official who performed the marriage ceremony; or

(2) Other convincing evidence, such as the sworn statements of at least two persons who have direct knowledge of the marriage, preferably eyewitnesses to the marriage ceremony.

(Approved by the Office of Management and Budget under control number 3220-0140)

§ 219.32 Evidence of a common-law marriage.

(a) *Preferred evidence.* Evidence of a common-law marriage must give the reasons why the informant believes that a marriage exists. If the information described in this paragraph is not furnished on a form provided by the Board, it must be submitted in the

form of a sworn statement. Preferred evidence of a common-law marriage is one of the following:

(1) If both the husband and wife are alive, each shall sign a statement and get signed statements from one blood relative of each. The statement of another individual may be submitted for each statement the husband or wife is unable to get from a relative. Each signed statement should show—

(i) That the husband and wife believed they were married;

(ii) The basis for this belief; and

(iii) That the husband and wife have presented themselves to the public as husband and wife.

(2) If either the husband or wife is dead, the surviving spouse shall furnish a signed statement and signed statements from two blood relatives of the dead spouse. The surviving spouse's statement should show that he or she and the dead spouse believed themselves to be married, the basis for this belief, and that they presented themselves to the public as husband and wife. The statements from relatives of the dead spouse should support the surviving spouse's statement.

(3) If both husband and wife are dead, the applicant shall get a signed statement from one blood relative of each dead spouse. Each statement should show that the husband and wife believed themselves to be married, the basis for this belief, and that they presented themselves to the public as husband and wife.

(4) Statements by relatives and other individuals described in paragraphs (a)(1), (2) and (3) of this section are not required when—

(i) The husband and wife entered into a ceremonial marriage which was void because of a legal impediment to the marriage;

(ii) After the impediment was removed, the husband and wife continued to live together as man and wife until the employee filed an application or one of them died; and

(iii) A valid common-law marriage was established, under the law of the State in which they lived, by their continuing to live together as man and wife.

(b) *Other evidence of common-law marriage.* When preferred evidence of a